that here, as in the cases involving the validity of trust receipts, the same results can be reached whether we call the transaction a conditional sale or a mortgage. Since the retention of title by a conditional vendor is merely to have security for the purchase price, the transaction is in its essence a mortgage.[21] This is evidenced by the fact that the risk of loss of the goods is not on the seller, despite his legal title, but is on the buyer.[22] It follows that since a mortgagee is permitted to foreclose and sell the property and then recover any deficiency from the mortgagor, a conditional vendor should have a similar right.[23] The court in the *Charavay Case* seems to fear that if a conditional vendor retakes the goods he thereby destroys the consideration for the debtor's obligation to pay and consequently cannot thereafter maintain an action for the deficiency. But this difficulty is avoided if the vendor reclaim the property, not as his own, but expressly for the purpose of reselling on account of the buyer.[24] And finally, it is only a logical extension of this analogy to permit the conditional vendor's title to stand as security, not only for the purchase price of those particular goods, but also for other debts as well if the parties so stipulate. In such a case, the bank might be the legal owner of the goods until they were paid for, and might thereafter have an equitable lien on them for other debts.[25]

EQUITABLE CONVERSION AS BETWEEN LIFE TENANT AND REMAINDERMAN.—Where a life estate is followed by one or more remainders, the testator is presumed to have intended to afford the remainderman a substantial enjoyment of the property, and in the endeavor of the courts to carry out this intention without prejudicing the life tenant, perplexing problems often arise. In order to effectuate this supposed intention, it has been found necessary in many cases to invoke the doctrine of equitable conversion. Since the facts indicating the testator's intention vary with each case, the theory is, however, often difficult of general application. There is obviously no objection to invoking the doctrine where there has been a specific testamentary direction, mandatory in its nature, to convert realty into personalty or *vice versa*,[1] without leaving any discretion in the executor or trustee.[2] Where the trustee is given discretion as to the time or

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[21]Williston, Sales, § 330.

[22]Tiffany, Sales, 142-143.

[23]Prof. Williston, 20 Harvard Law Rev.. 370-371 and note.

[24]Perhaps this may explain the result in Drexel *v.* Pease (1892) 133 N. Y. 129, which is said in the Charavay Case to be inconsistent with conditional sale.

[25]See *In re* Cattus, *supra*.

[1]McFadden *v.* Hefley (1887) 28 S. C. 317.

[2]Fisher *v.* Banta (1876) 66 N. Y. 468; Allen *v.* Watt's Exr. (1893) 98 Ala. 384. With the consent of the beneficiaries, the property may, however, remain realty. This is said to constitute a reconversion, and may be evidenced by a deed in which all the beneficiaries join, or by the terms of the answer, Duckworth *v.* Jordan (1905) 138 N. C. 520, or by a simple indication of their intention to relinquish the right to an actual sale. Howell *v.* Mallon (1899) 189 Pa. 169.

manner of sale or as to the persons of the beneficiaries, but a conversion is directed to be made some time,[3] at all events, the foregoing rules will also apply. So it has been held that conversion should be had even in the absence of any direction for such metamorphosis, if the general testamentary scheme be otherwise unworkable.[4] It is generally said that the fact that the testator has blended real and personal property in a specific or residuary gift, is strong evidence to support an equitable conversion.[5]

In the foregoing cases, a conversion as to remaindermen dates from the death of the testator, although there may have been a direction that the life tenant should enjoy the property in specie.[6] If, however, the vesting of a discretion in the trustee be not accompanied by a positive direction to convert,[7] and the general testamentary scheme be consistent with leaving the estate *in statu quo,* or where there is a direction for conversion at some specific time in the future,[8] then the real property will not become personalty immediately at the death of the testator in the contemplation of equity. This proposition was urged in the recent case of *Lawrence* v. *Littlefield* (N. Y. App. Div. 1915) 52 N. Y. L. J., March 22, 1915, not yet reported, in which a share of residuary real and personal property was given in trust to invest and pay the proceeds over to a designated beneficiary, with remainders over to her children. The trustees were given authority to sell the real estate upon such terms as in their judgment should be deemed proper, to pay off liens out of the proceeds, and invest the surplus for the plaintiff's benefit in the manner directed. Although the real estate in question was unproductive and continually depreciating in value, no sale thereof had been made by the trustees other than was necessary to pay off liens which had accrued against the property, so that the plaintiff had received no income from the real estate for over four years. In a suit brought by her to recover the back income out of other sums of money which had been received by the administrator c. t. a., it was held that she was not entitled to recover. In a prior proceeding to construe the will, it had been decided that the provision for blending in the residuary clause had worked a conversion of the real estate into personalty from the time of the testator's death. The court in the principal case adopted this view with some reluctance, but decided, nevertheless, that the life tenant was not entitled to

If there be a direction to convert a specific sum into personalty, and a surplus remain, such surplus will be treated as real property. See James *v.* Hanks (1903) 202 Ill. 114. There will be no conversion should the devise in which conversion is directed be ineffectual as contrary to statute, Jones *v.* Kelly (1902) 170 N. Y. 401, or where the purpose of the devise has failed, or has been accomplished. Trask *v.* Sturges (1902) 170 N. Y. 482.

[3]Lambert *v.* Morgan (1909) 110 Md. 1; Burbach *v.* Burbach (1905) 217 Ill. 547; Underwood *v.* Curtis (1891) 127 N. Y. 523. This will follow although conversion be made expressly dependent upon a contingency. Crane *v.* Bolles (1892) 49 N. J. Eq. 373; but see Underwood *v.* Curtis, *supra.*

[4]Severns's Estate (1905) 211 Pa. 65; see Matter of Gantert (1892) 136 N. Y. 106; Scholle *v.* Scholle (1889) 113 N. Y. 261.

[5]Russell *v.* Hilton (N. Y. 1903) 80 App. Div. 178; Harrington *v.* Pier (1900) 105 Wis. 485.

[6]Thomman's Estate (1894) 161 Pa. 444.

[7]Matter of Bingham (1891) 127 N. Y. 296; Scholle *v.* Scholle, *supra.*

[8]Moncrief *v.* Ross (1872) 50 N. Y. 431.

income in spite of the conversion, because of the discretion vested in the trustees.

This position does not appear inconsistent on its face, since the mere change in the name of real property to personalty would not *ipso facto* entitle the life tenant to income where the land converted was not actually turned into money and the land as such remained unproductive.[9] It remains, however, to test the decision in light of the rule laid down in *Howe* v. *Earl of Dartmouth*,[10] a case which has been consistently followed in the United States.[11] It was there held that where a general or residuary bequest of personal property for life, with remainders over, consisted of wasting or perishable property, such property should be promptly converted into money and invested in Consolidated Annuities,[12] to pay the yearly income over to the life tenant, in order to save the bequest of the remainderman in accordance with the testator's intention.[13] In order to further effectuate this intention, the courts have logically extended the doctrine to cases in which the property was simply unproductive.[14] It should follow that there is a reciprocal duty to permit the life tenant a reasonable income, and it is accordingly held that a gift of unproductive property yielding nothing during the life tenancy, such as a reversionary interest, should be converted into money and invested for his benefit.[15] If, however, the testator indicate that conversion shall be delayed or shall never accrue, the rule in *Howe* v. *Earl of Dartmouth* is held inapplicable. Such intention is manifested by a direction to convert at some period of time in the future,[16] or by the vesting of a discretion in the executor or trustee in regard to the time of conversion.[17] It would seem that the principal case can be supported only as falling within this class, and that an actual conversion into productive personalty could be postponed in the discretion of the trustees, even though the land was personal property in the contemplation of equity. Since

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[9]See *In re* Searle, L. R. [1900] 2 Ch. 829.

[10](1802) 7 Ves. Jr. *137.

[11]Covenhoven *v.* Shuler (N. Y. 1830) 2 Paige Ch. 122; Calkins *v.* Calkins (N. Y. 1860) 1 Redf. 337; Ames' Cases on Trusts (2nd ed.) 491n.

[12]The yield from such investments would to-day approximate 2½ per cent on their par value. Because of the difference in the rate of return on capital in the United States, it is held in this country that any security in which trust funds may be legally invested, yielding approximately 5 per cent, will satisfy this requirement. Williamson *v.* Williamson (N. Y. 1837) 6 Paige Ch. 298.

[13]See Hinves *v.* Hinves (1844) 3 Hare 609; Pickering *v.* Pickering (1839) 4 My. & C. *289; Lewin, Trusts (12th ed.) 333. If, however, the bequest be specific, the testator is presumed to intend that the successive beneficiaries enjoy the legacy according to the gift, and a conversion will not be decreed. Hinves *v.* Hinves, *supra*; 2 Perry, Trusts (6th ed.) § 547.

[14]Spear *v.* Tinkham (N. Y. 1847) 2 Barb. Ch. 211; Yates *v.* Yates (1860) 28 Beav. 637.

[15]Fearns *v.* Young (1803) 9 Ves. Jr. *549; Wilkinson *v.* Duncan (1857) 23 Beav. 469; 2 Perry, Trusts (6th ed.) § 549.

[16]Alcock *v.* Sloper (1833) 2 M. & K. *699.

[17]*In re* Pitcairn, L. R. [1896] 2 Ch. 199. But the mere absence of a direction to convert will not dispense with the rule. Morgan *v.* Morgan (1851) 14 Beav. 72.

it did not appear that the trustees had abused their discretion,[18] the life tenant was not entitled to relief.[19]

INTEREST IN ACTIONS FOR UNLIQUIDATED DAMAGES.—The allowance of interest to a successful plaintiff in a suit for damages, although unknown to the early common law, has been growing steadily since the time of its creation by statute.[1] But the English courts still regard interest as something to be had as a matter of law only by virtue of statute,[2] or a promise to pay it, express or implied from usage of trade.[3] The rigidity of this rule has been relaxed in cases where a definite sum of money is due at a fixed time, by allowing the jury in its discretion, to give interest by way of damages;[4] and by statute this method of compensation has been extended to many actions such as trover, trespass *de bonis asportatis*, and actions on insurance policies.[5] But even in cases of commercial paper, if interest be not payable by the terms of the note, it can be recovered only as damages in the discretion of the court or jury.[6]

These principles still obtain in several jurisdictions in this country, where it is often broadly stated that the recovery of interest depends entirely upon statute.[7] The prevailing view, however, is that interest is the natural growth of money and should be given to the plaintiff with the principal, to compensate him fully, whenever he has sustained pecuniary damage.[8] Where the demand is liquidated or can be computed easily from recognized standards, there is little difficulty in

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[18]For examples of the somewhat contradictory phrase "abuse of discretion," see Severn's Estate No. 2 (1905) 211 Pa. 68; Wilkinson *v.* Duncan, *supra*. Because of the inherent difficulty of selling unproductive real estate, it will require a clear indication of neglect to impugn this discretion.

[19]Hite's Devisees *v.* Hite's Exr. (1892) 93 Ky. 257. It is generally held that where the rule in Howe *v.* Earl of Dartmouth is not applicable, the life tenant is entitled to the actual return from the property, see Yates *v.* Yates, *supra*, and if there be no such return, he will, of course, be entitled to nothing. Hite's Devisees *v.* Hite's Exr., *supra*; see *In re* Searle, *supra*.

[1]The Statute of 37 Hen. VIII, c. 9, gave 10 per cent interest, which was reduced to 5 per cent by 12 Ann. Stat. 2 c. 16.

[2]1 Sedgwick, Damages (9th ed.) § 292; Arnott *v.* Redfern (1826) 3 Bing. 353.

[3]Lord Mansfield and Lord Thurlow regarded a contract to pay a certain sum of money at a fixed time as implying a promise to pay interest from that date, Robinson *v.* Bland (1760) 2 Burr. 1077; Boddam *v.* Ryley (1785) 2 Bro. C. Rep. 2; but this view was not followed. Higgins *v.* Sargent (1823) 2 B. & C. 348.

[4]Arnott *v.* Redfern, *supra*; Watkins *v.* Morgan (1834) 6 C. & P. 661; Price *v.* Great Western Ry. (1847) 16 M. & W. 244; Cook *v.* Fowler (1874) L. R. 7 H. L. 27.

[5]3 & 4 Wm. IV, c. 42, §§ 28, 29; see Hill *v.* South Staffordshire Ry. (1874) L. R. 18 Eq. 154.

[6]Cameron *v.* Smith (1819) 2 B. & Ald. 305; Keene *v.* Keene (1857) 3 C. B. [N. S.] 144; *Ex parte* Charman (1887) W. N. 184.

[7]Denver etc. R. R. *v.* Conway (1884) 8 Colo. 1, 15; Supervisors *v.* Klein (1876) 51 Miss. 807, 816; Sammis *v.* Clark (1852) 13 Ill. 544.

[8]Sedgwick, Damages (9th ed.) §§ 292, 315, 316.